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Speaking Notes for the
Minister of Justice and Attorney General of Canada, Vic Toews, Q.C.

Ad Hoc Committee to Review a Nominee for the Supreme Court of Canada

Ottawa, Ontario

Monday, February 27, 2006

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Introduction

Committee colleagues, Mr. Justice Rothstein, Professor Hogg, ladies and gentlemen,

We are here this afternoon to take part in an historic proceeding in the life of our country. For the first time ever, Canadians – through their elected Members of Parliament – will be able to hear directly from a nominee for the Supreme Court of Canada on a range of different issues.

The goal is to inform the Prime Minister's eventual decision, which will be made this Wednesday. It is also to provide more transparency and accountability to the appointments process. Canadians deserve to know more about those individuals who are appointed to the Supreme Court and we are here to provide that opportunity.

How we got here

The selection process commenced last summer, when the Honourable Mr. Justice John Major announced that he would retire from the Court effective Christmas Day. Mr. Cotler, the previous Minister of Justice – who is sitting on our committee today – engaged in a series of consultations to draw up a list of six candidates to fill the vacancy. Justice Major is from Alberta and therefore, by tradition, the list of potential replacements came from the Prairies and the North region.

The list of six names was presented to an advisory committee made up of a retired judge, a nominee of the Prairie provincial governments, a nominee of the legal profession in the Prairies, two lay people and four MPs – including myself, Ms Neville and Mr. Comartin, who are also sitting on our committee today.

The advisory committee conducted research and a series of consultations on these six candidates and narrowed the longer list of six down to a short list of three names, which it presented to Mr. Cotler just before the election was called. The election call effectively suspended the process, and the short-list was provided to the new Government upon our taking office.

Given that the process initiated by the previous Government was nearing completion, and faced with the immediate need to fill the current vacancy, the Prime Minister announced last Monday that our Government would not start back at square one, but would select the nominee from the existing short list. However, he also announced that we would strengthen the process by adding a public hearing component to bring greater openness and accountability. That is the task we are

undertaking today.

Procedural Matters

Before I introduce the nominee, Mr. Justice Marshall Rothstein, and Professor Peter Hogg, I want to speak to some procedural matters which were decided by the committee just prior to the commencement of this hearing.

First, the order of presentation. Professor Hogg will be making an opening presentation of about 15 minutes. The nominee will then be making some opening remarks of about 20 minutes. Then, each committee member will have three rounds of questioning – the first lasting eight minutes and the second and third round lasting four minutes. As Chair, I am charged with applying the time limits. At the end of the proceeding, Professor Hogg will summarize and I will give a short closing statement.

Second, Parliamentary Privilege. I should remind members and our distinguished guests that technically this is not a Parliamentary committee, so Parliamentary privilege does not apply. I suspect this will not be an issue, but just to remind you that if we say something defamatory, we may not be protected as we normally are in Parliamentary proceedings.

In this particular case, the witness – in fact, the nominee – is in a very unusual situation. As a witness, he will nevertheless determine and have the final say on the propriety of questions that will be asked. I think this is necessary, given the central, independent nature of the judiciary in this country and that we, as parliamentarians, must respect that independence. While committee members may pose some questions, answers may not be given in full, or at all. Justice Rothstein will have the discretion to explain why he choses not to answer the question.

Mr. Justice Rothstein

Now to the nominee.

I have the distinct honour and privilege of introducing a fellow Manitoban – the Honourable Mr. Justice Marshall E. Rothstein – as the Government's nominee to the Supreme Court of Canada.

Justice Rothstein was born, raised and educated in Winnipeg. He was called to the Bar of Manitoba in 1966 and was appointed a Queen's Counsel in 1979. From 1966 to 1992, he practiced in a private law firm in Winnipeg. His areas of expertise are administrative law, commercial law, tax law, transportation law and intellectual property law.

During his time in practice, he spent several years as a part-time human rights adjudicator. He also taught part time at his *alma mater* – the Faculty of Law at the University of Manitoba. In 1992, he was appointed as a judge of what is now known as the Federal Court and in 1999 he was elevated to what is now known as the Federal Court of Appeal. As part of his judicial duties, he has served as a judge of the Court Martial Appeal Court and as a judicial member of the Competition Tribunal.

He was married in 1966 to his wife Sheila and has four children and two grandchildren.

Justice Rothstein is well known as a brilliant jurist, with remarkable intelligence and great analytical skills. He is well respected among his judicial colleagues, works collegially and is highly respected in the legal profession. His output of judicial writing is prolific – over 900 decisions during his 13 years on the bench. His writing is clear, precise and complete.

He is known as being an extremely hard worker, with the highest degree of integrity and personal and professional ethics. He has been described as pleasant, engaging and thoughtful and is also an

excellent speaker. He is known as a good listener and one who seeks out all points of view with respect to legal arguments. He is respectful of counsel and open to sharing his knowledge and experience with law students and others.

I am confident that he will make an excellent addition to the Supreme Court of Canada.

Prof. Peter Hogg

We will begin our proceeding today with a presentation by Professor Emeritus Peter Hogg. Professor Hogg is a very well known name in legal circles. He is the pre-eminent constitutional law scholar in Canada. In law offices across the country – both government and private – his book on constitutional law is an indispensable resource. In fact, he is the academic who is the most cited by the Supreme Court of Canada in its decisions.

Prof. Hogg was educated at the University of New Zealand and Harvard Law School. He was called to the Bar of New Zealand in 1962 and taught in New Zealand and Australia before coming to Canada in 1970 to teach at Osgoode Hall Law School in Toronto. He was called to the Bar of Ontario in 1973 and received his Queen's Counsel designation in 1980. He is a Fellow of the Royal Society of Canada, a Companion of the Order of Canada, a recipient of the Law Society Medal and the list goes on. He was Dean of Osgoode Hall from 1998 to 2003.

We are very privileged to have him speak to us today on the constitutional framework that informs our deliberations today and on the Canadian traditions governing the proper limits of judicial speech.

Professor Hogg, the floor is yours.

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